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**IN THE  
COURT OF APPEALS OF INDIANA**

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STEVEN BURTON, JR.,  
  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
  
Appellee-Plaintiff.

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No. 18A02-0611-CR-1050

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APPEAL FROM THE DELAWARE CIRCUIT COURT  
The Honorable Wayne J. Lennington, Judge  
Cause Nos. 18C05-0512-FB-21, 18C05-0603-FC-3

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**July 25, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

Steven Burton, Jr. pled guilty to one count of burglary<sup>1</sup> as a Class B felony and one count of forgery<sup>2</sup> as a Class C felony. He appeals his sentence, raising the following restated issue: whether the trial court erred in its consideration of the aggravating and mitigating circumstances.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On October 30, 2006, Burton pled guilty to one count of burglary as a Class B felony and one count of forgery as a Class C felony. Pursuant to the plea agreement, the State agreed to dismiss all of Burton's other pending charges. The plea agreement stated that his executed sentence could not exceed twelve years. At the sentencing hearing, the trial court found that the aggravating circumstances outweighed the mitigating circumstances and sentenced Burton to twelve years executed for the burglary conviction and three years executed for the forgery conviction with both sentences to run concurrently with each other. Burton now appeals.

### **DISCUSSION AND DECISION**

Burton argues that the trial court erred in its consideration of the aggravating and mitigating circumstances and in sentencing him to a combined enhanced sentence of twelve years. He contends that the trial court should have acknowledged that he was a hard worker, a good father, and that a lengthy incarceration would have a negative effect on his children as mitigating circumstances. He also claims that the trial court inaccurately used prior

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<sup>1</sup> See IC 35-43-2-1.

dismissed charges as a part of his criminal history.

Appellate courts may revise a sentence after careful review of the trial court's decision if they conclude that the sentence is inappropriate based on the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Even if the trial court followed the appropriate procedure in arriving at its sentence, the appellate court still maintains a constitutional power to revise a sentence it finds inappropriate. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005). We can only review the presence or absence of reasons justifying a sentence for an abuse of discretion, but we cannot review the relative weight given to these reasons. *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007).

When a defendant alleges that the trial court failed to identify a mitigating circumstance, he is required to establish that the mitigating evidence is both significant and clearly supported by the record. *Carter v. State*, 711 N.E.2d 835, 838 (Ind. 1999). "If the trial court does not find the existence of a mitigating factor after it has been argued by counsel, the trial court is not obligated to explain why it has found that the factor does not exist." *Fugate v. State*, 608 N.E.2d 1370, 1374 (Ind. 1993).

Here, during Burton's sentencing hearing, his girlfriend testified that Burton was a hard worker and a good father to his children. She made these statements in response to a question to describe Burton when he was not using drugs. We do not believe that the trial court abused its discretion in not finding these to be mitigating circumstances. Burton's girlfriend also testified that a long incarceration period would be a hardship to his two children. The trial court should have acknowledged that the sentence would result in an

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<sup>2</sup> See IC 35-43-5-2(b)(1).

undue hardship to his children. *See* IC 35-38-1-7.1(a)(10).

In spite of this, the trial court justified Burton's sentence in other ways. The trial court determined that Burton's criminal history was an aggravating circumstance. Burton's criminal history consisted of several juvenile adjudications, including three for burglary, and several adult convictions, including two for burglary and one for escape. Although the convictions were over twenty years old, they were still relevant to the current charges because Burton's current convictions included another burglary. This criminal history alone was sufficient to enhance Burton's sentence from the advisory sentence. *Mitchell v. State*, 844 N.E.2d 88, 91 (Ind. 2006) (citing *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) (fact of prior convictions may always be used in consideration of defendant's sentence)).

Further, Burton's sentence is not as severe as he complains. He was sentenced to twelve years for the burglary conviction, which is two years above the advisory sentence for a B felony. He was also sentenced to three years for the forgery conviction, which is one year less than the advisory for a C felony. Both of the sentences were to run concurrently for a total of twelve years. Burton initially faced a possible maximum sentence of sixty-six years if he was convicted of all the crimes for which he was charged, and as a result of a plea agreement, he received only twelve years. We conclude that Burton's sentence was not inappropriate.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.